

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JASON MCLEAN and
BRIAN COLEMAN,

Plaintiffs,

v.

COMMUNICATIONS
CONSTRUCTION GROUP, LLC.,

Defendant.

Civ. No.: 06-617-SLR

PLAINTIFFS' OPENING BRIEF IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY JUDGMENT

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NATURE AND STAGE OF PROCEEDINGS

Brian Coleman and Jason McLean ("plaintiffs") commenced this Title VII action on October 2, 2006 contending that they were the subject of racial harassment and retaliation. Defendant Communications Construction Group, LLC ("defendant CCG") answered the complaint on October 24, 2006. On November 28, 2007, plaintiffs filed this partial motion for summary judgment and this accompanying opening brief in support thereof.

SUMMARY OF THE ARGUMENT

- I. Foreman Brad Dodson telling two CCG employees that McLean and Coleman were “two dumb lazy niggers” constitutes harassment under Title VII.
- II. As crew foreman and Brian Coleman and Jason McLean’s direct boss, having impact on their promotions and raises, Bradley Dodson was their supervisor as defined under Title VII.

STATEMENT OF FACTS

Around May 27, 2005, Communications Construction Group, LLC (“CCG”) foreman Bradley Dodson was speaking with two co-workers at a job site and stated, “At least you don’t have to work with two dumb niggers!”. (Robert Koch Deposition at 11, 15-22, McLean Ex.1)

Dodson made the statement to Robert Koch. Koch was a member of a different crew. The statement was also made in front of another employee Joseph Tatsch. (Joseph Tatsch Deposition at 13, 1-8, McLean Ex.2) This type of statement is fairly common between CCG employees. (Robert Koch Deposition at 15, 9-25, McLean Ex.3)

A few days later, on May 31, 2005, Robert Koch informed plaintiffs of the statement. Right afterwards, plaintiffs Coleman and McLean asked Dodson if he made the remark. Plaintiffs were the first employees to alert human resources of the incident (Michael B. Fender Deposition at 18, 1-8, McLean Ex.4) When asked by plaintiffs about the remark, Bradley Dodson jumped off a machine and continually pointed his finger in McLean’s chest. (Michael B. Fender Deposition at 42, 1-7 McLean Ex.5,) The project supervisor of the jobsite was David Dodson, Bradley Dodson’s brother. (Robert Koch Deposition at 14, 5-13 McLean Ex.6) After the confrontation, Bradley Dodson called David Dodson. (David E. Dodson Deposition at 23, 10-13, McLean Ex.7) David Dodson was Bradley Dodson’s boss at the time. (Michael B. Fender Deposition at 32, 5-8, McLean Ex.8) Employees Robert Koch and Joseph Tatsch confirmed that Dodson made the racial slur about defendants. At the time, Bradley Dodson was poking Jason McLean in the chest, he said, “My brother is the supervisor” or something to that nature. (Jason McLean Deposition at 63, 1-5, McLean Ex.9) Michael B. Fender was the field supervisor

at the jobsite. (Michael B. Fender Deposition at 31, 5-12, McLean Ex.10) Upon arriving at the incident, Fender had a fifteen-minute conversation with Jason McLean and Brian Coleman. (Michael B. Fender Deposition at 25, 17-23, McLean Ex.11) Robert Koch told Fender that he heard Bradley Dodson call McLean and Coleman "two dumb niggers". (Michael B. Fender Deposition at 27, 16-19, McLean Ex.12) After the incident, the police arrested Bradley Dodson. (David E. Dodson Deposition at 28, 17-20, McLean Ex.13) Later, the plaintiffs were reassigned to a different crew. (Robert Koch Deposition at 26, 1-17, McLean Ex.14)

Bradley Dodson was a foreman with CCG. (Robert Koch Deposition at 13, 10-11, McLean Ex.15) A foreman is a boss of a crew who supervises anywhere from four to six employees. (Robert Koch Deposition at 13, 17-22, McLean Ex.15) Bradley Dodson was the plaintiffs' direct boss. (Michael B. Fender Deposition at 32, 17-20, McLean Ex.16) Coleman and McLean were the only members of his crew. A foreman would be given work by a project supervisor and decide how to go about doing the work. (David E. Dodson Deposition at 13, 1-14, McLean Ex.17) A foreman would give feedback to the project supervisor concerning members of his crew. (David E. Dodson Deposition at 13, 12-20, McLean Ex.17) CCG conducted regular evaluations of employees that impacted promotions and pay. (David E. Dodson Deposition at 19, 1-16, McLean Ex.18) A foreman's input was sought for evaluations of crew members. (David E. Dodson Deposition at 18, 1-24, McLean Ex.19) The Human Resource Manager stated that Bradley Dodson was "in supervision". (Lisa Clements Deposition at 29, 13-19, McLean Ex.20)

CCG is a limited liability company organized and existing under the laws of Delaware. *Answer by Defendant ¶2*. CCG has operations in Delaware, New Jersey, and Delaware and currently has 70 employees. *Answer by Defendant ¶2*

Plaintiff Brian Coleman was a good employee. (Michael B. Fender Deposition at 40, 3-4, McLean Ex.21) He was dependable and came to work everyday. (David E. Dodson Deposition at 38, 1-7, McLean Ex.22) At the time of the incident, there were no problems with plaintiff Jason McLean's work. (David E. Dodson Deposition at 38, 1-7, McLean Ex.22)

CCG's reporting system on harassment allows a crew member to report racial harassment to a foreman. (David E. Dodson Deposition at 21, 21-24 and at 22, 1-11, McLean Ex.23) (CCG Harassment and Reporting Policy, McLean Ex.24). Dodson's actions were in violation of CCG's policy against racial harassment. (David E. Dodson Deposition at 35, 6-24, McLean Ex.25) (Lisa Clements Deposition at 17, 21-23, McLean Ex.26)

At the time of the incident, Lisa Clements was the manager of Human Resources and conducted an investigation. Clements never received any training on harassment or discrimination during her employment with CCG. (Lisa Clements Deposition at 16, 15-17, McLean Ex.27) Clements never conducted or participated in an investigation into racial harassment prior to the incident. (Lisa Clements Deposition at 18, 22 to 19, 1-11, McLean Ex.28) After the incident, Robert Koch and Joseph Tatsch reported what they heard to Clements and CEO Jonathan Gates. (Robert Koch Deposition at 21, 1-25, McLean Ex.29) Tatsch was told by all of the other employees to "keep his mouth shut" and "not say anything." (Joseph Tatsch Deposition at 22 and 23, McLean Ex.30) No

employee told Clements that Bradley Dodson did not make the statement. (Lisa Clements Deposition at 22, 13-16, McLean Ex.31) Although, two employees told Clements that Bradley Dodson called the plaintiffs “two dumb niggers”, Clements stated that there was no concrete evidence that the statement was made. (Lisa Clements Deposition at 25, 8-9, McLean Ex.32) Employees also told Clements that Bradley Dodson had poked Brian Coleman in the chest during the incident. (Lisa Clements Deposition at 27, 14-22, McLean Ex.33) Bradley Dodson’s sole punishment was a written warning. (Lisa Clements Deposition at 28, 1-17, McLean Ex.34)

Ultimately, Clements both “believed and didn’t believe” that Bradley Dodson called the plaintiffs “two dumb niggers” (Lisa Clements Deposition at 32 at 6-24 and at 33, 1-23, McLean Ex.35) Even after the incident, Clements did not believe that Bradley Dodson did not get along with the plaintiffs. (Lisa Clements Deposition at 16, 14-22, McLean Ex.36) Clements never followed up as to the outcome of Bradley Dodson’s arrest. (Lisa Clements Deposition at 40, 17-19, McLean Ex.37) Clements gave Bradley Dodson the same punishment of the plaintiffs- written warnings. (Lisa Clements Deposition at 28, 14-17, McLean Ex.38) After the investigation, David Dodson and Jonathan Gates decided where the plaintiffs would be transferred and subsequently laid off. (Lisa Clements Deposition at 42, 4-10, McLean Ex.39) Even though she had more knowledge concerning the events that transpired, she was not consulted as to the plaintiffs’ future at CCG. (Lisa Clements Deposition at 43, 1-14, McLean Ex.40) Fender did not believe that Coleman and McLean should receive the same punishment as Bradley Dodson. (Michael B. Fender Deposition at 44, 11-12, McLean Ex.41) Prior to making the comment about Coleman and McLean, Bradley Dodson complained about the

plaintiffs to his brother David Dodson. (*David E. Dodson Dep.* at 33, 1-16 McLean Ex.42).

ARGUMENT I

I. PLAINTIFF IS ENTITLED TO JUDGMENT IN ITS FAVOR AS FOREMAN BRAD DODSON TOLD SEVERAL CCG EMPLOYEES THAT MCLEAN AND COLEMAN WERE "TWO LAZY DUMB NIGGERS".

A. Standard of Review

Federal Rule of Civil Procedure 56 states that summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The plain language of Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)); see also *Burkhart v. Davies*, 602 A.2d 56, 59 (Del.1991).

An employer is subject to vicarious liability for an actionable hostile environment created by a supervisor with immediate or successively higher authority over employee. *Faragher v. City of Boca Raton*. 524 U.S. 775 (1998). For purposes of an employer's liability under Title VII, when co-workers are the perpetrators of the harassment, the plaintiff must prove employer liability using traditional agency principles; there is such a basis for liability where supervisors knew or should have known about the co-worker harassment, but failed to take prompt and adequate remedial action to stop the abuse. *Moore v. City of Philadelphia* 461 F.3d 331 C.A.3 (Pa.), 2006 citing Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e-3(a).

Simply because the comment was made out of earshot of the plaintiffs does not make it not actionable under Title VII. See *Moore*. In *Moore*, the court stated, "If a white supervisor told white employees that he fired someone because he was black or harasser someone because she was female, it would not matter that this comment was made outside of earshot of the victim or that the employee did not actually witness the firing or the harassment."

Bradley Dodson calling the plaintiffs "two dumb lazy niggers" to two other co-workers and then physically attacking Jason McLean qualifies as racial harassment under Title VII. See *Moore*. It is undisputed that foreman Bradley Dodson told co-workers Robert Koch and and Joseph Tatsch "at least you don't have two dumb niggers working with you" referencing the plaintiffs. (McLean Ex.1). Joseph Tatsch testified that Bradley Dodson call the plaintiffs "two fucking dumb lazy niggers". (McLean Ex.2)

At the time, Dodson was the foreman or "boss of the crew" who plaintiffs Jason McLean and Brian Coleman were the only members. (McLean Ex.8). David Dodson, Brad Dodson's brother was responsible for all of the crews working in the area. (McLean Ex.6) Bradley Dodson and other CCG employees have a history of making these same type of statements. (McLean Ex.3) CCG employees would make racial comments when they stayed at motels off the worksite. (McLean Ex.3) Robert Koch reported what Brad Dodson said to Lisa Clements and Jonathan Gates.(McLean Ex.29). Tatsch also reported what he heard to Lisa Clements. (McLean Ex.30) Tatsch was told by other employees to "shut his mouth and not say anything". (McLean Ex.30) Later, David Dodson participated in the decision to transfer the plaintiffs and subsequent termination from the company.

Brad Dodson's actions violated CCG's own policy against harassment. (McLean Ex.25). Lisa Clements testified that calling the Plaintiffs "two dumb niggers" and then physically assaulting another employee violates CCG's harassment policy. (McLean Ex.26)

ARGUMENT II

I. PLAINTIFF IS ENTITLED TO JUDGMENT IN ITS FAVOR AS BRAD DODSON WAS BRIAN COLEMAN AND JASON MCLEAN'S IMMEDIATE SUPERVISOR.

A supervisor is a person who can directly or indirectly affect a tangible employment action. *See Faragher; Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998). A "tangible employment action" consists of a significant change in employment status such as hiring, firing, failing to promote, reassignment with significantly different responsibilities or a decision causing a significant change in benefits.

When the alleged harasser is a supervisor, Defendant employer is presumed to be absolutely liable for harassment under Title VII. *See Faragher*. An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. *See Burlington Industries, Inc.*

Here, Bradley Dodson was plaintiffs' immediate supervisor. Dodson was in charge of McLean and Coleman on a daily basis. (McLean Ex.16). As foreman, Bradley Dodson gave feedback to higher ups on how crewmembers were doing. (McLean Ex.17). Foremen help evaluate crewmembers which directly impacts a crewmember's wages and promotions. (McLean Ex.18) Prior to making the statement, Brad Dodson told his brother and superior David Dodson that McLean and Coleman had work problems. (McLean Ex.42).

CCG should be held liable for the acts of Bradley Dodson since he was the plaintiffs' supervisor.

CONCLUSION

Based on the foregoing reasons, Plaintiffs Jason McLean and Brian Coleman respectfully request that this Court enter an order declaring that foreman Bradley Dodson calling the plaintiffs “two dumb lazy niggers” to two other co-workers and then physically attacking Jason McLean qualifies as racial harassment under Title VII and that CCG should be held vicariously liable for the acts of Bradley Dodson since he was the plaintiffs’ supervisor.

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McLean Exhibit 1

1 Q Who is Brad Dodson?

2 A He was an employee.

3 Q Where was the conversation that you had
4 with him?

5 A On one of the job sites.

6 Q It was out on a job site?

7 A Yeah.

8 Q Was there anyone else present for this
9 conversation?

10 A When he said it, yeah.

11 Q Who else was present?

12 A Joe Tatsch.

13 Q And what was the -- how did this
14 conversation come about?

15 A We were -- I think it was on a Friday,
16 Thursday, Friday. I think it was a Friday because we
17 were leaving, and we parked equipment up past him.
18 And we were walking on down by, and he said to us it
19 because we were leaving.

20 He said, it must be nice to leave. I said,
21 well, you get work done -- that what he said, he said,
22 you don't have the two dumb niggers working with you.

23 Q So you were just going past him at that
24 point. It wasn't an ongoing conversation about
25 anything?

McLean Exhibit 2

1 was talking to Bobby Koch --

2 If you want to know what he heard, I'll
3 tell you what he said. He ended up -- apparently, him
4 and them other two that you're talking about they
5 weren't getting along too good, so Brad Dodson ended
6 up called them stupid Fing --

7 Q Please, you know --

8 A -- niggers.

9 So then I never said anything because I
10 just kept walking down the road. I didn't want to
11 cause no trouble with anybody, but I got drug back
12 into it.

13 I went up the road. And, apparently, one
14 of the other guys had told them what Brad Dodson
15 said.

16 Now, Brad Dodson did not say this to their
17 face. You know, he said it to this other guy; and,
18 apparently, he told him what the other one said.

19 Then it started a big dispute, and I didn't
20 want tied up in any of it because it comes to this,
21 and I did not want to be anywhere near a courthouse or
22 anything. I would rather stay up in my mountain and
23 be left alone.

24 Q Who was present when you and -- do you know
25 when the first comment that you referenced was made?

McLean Exhibit 3

1 would be acceptable under that policy?

2 A No.

3 Q You don't know or it would not be?

4 A No, it wouldn't be acceptable.

5 Q Given that, is there any particular reason
6 that you didn't tell anyone that this statement had
7 been made?

8 A No.

9 Q Had you ever heard Brad Dodson make such a
10 statement on a previous occasion?

11 A Yeah.

12 Q In what context?

13 A It's always -- comes out whenever you're
14 around motels, you know, work comes up.

15 Q From him? From other people?

16 A Everybody.

17 Q Other than Mr. Miller's crew and
18 Mr. Dodson's crew, were there any other crews doing
19 underground work in Delaware at that time?

20 A Yeah, there was other crews around.

21 Q When you said it comes up around the motel,
22 can you explain what you're referring to by the motel?

23 A Everybody sitting around drinking, talking
24 about work and stuff, talking about things, anything
25 in general, you know, drinking and just talking, it

McLean Exhibit 4

1 Q. At some point in time do you remember Jason
2 McLean or Brian Coleman calling human resources?

3 A. Yes.

4 Q. Who do you remember them calling in human
5 resources?

6 A. Can you repeat that?

7 Q. Which one, Jason McLean or Brian Coleman?

8 A. I don't recall.

9 MR. POLIQUIN: I'm going to mark this as an
10 exhibit.

11 (Fender Deposition Exhibit No. 1 was marked
12 for identification.)

13 BY MR. POLIQUIN:

14 Q. Mr. Fender, I'm showing you a letter from CCG's
15 attorneys to Novella West of the EEOC concerning this
16 incident. If you look on the bottom of the Page 13
17 there it's represented by Ben Huggett that, "As noted
18 before neither Mr. McLean nor Mr. Coleman contacted
19 HR. HR contacted them because the incident was
20 reported by management." Do you read that?

21 A. Yes, I read that.

22 Q. And that's contrary to what you testified to
23 here today that, in fact, Jason McLean or Brian
24 Coleman had, in fact, contacted HR on the date of the



McLean Exhibit 5

1 Brad Dodson was poking his finger in Brian Coleman's
2 chest?

3 A. Can you repeat that one more time?

4 Q. Were you made aware on May 31st, 2005 Brad
5 Dodson was poking his finger into Brian Coleman's
6 chest?

7 A. Yes.

8 Q. How did you feel about that?

9 A. Concerned.

10 Q. And why were you concerned?

11 A. Because of physical contact.

12 Q. And should that behavior be tolerated at CCG?

13 A. By "tolerated," what do you mean by tolerated?

14 Q. Do you know what the term "tolerated" means?

15 A. Yes.

16 Q. Do you think CCG should tolerate that behavior
17 if it was true that Brad Dodson had poked Brian
18 Coleman in the chest?

19 A. By not tolerating it are you saying be fired?

20 Q. I'm not saying be fired.

21 A. I don't know what you mean.

22 Q. What do you think would be the appropriate
23 punishment for Brad Dodson poking Brian Coleman in the
24 chest?



McLean Exhibit 6

1 Dave Miller.

2 Q Who else was on your crew?

3 A Joe, Don -- I can't remember Don's last
4 name -- and me. There was five of us.

5 Q Who was the CCG management responsible for
6 the crews working in this area?

7 A You mean over all the crews?

8 Q Yes.

9 A Dave Dodson.

10 Q Who is Dave Dodson, do you know?

11 A Who is Dave Dodson? Another Dodson, Brad's
12 brother or something.

13 Q Okay.

14 A Somehow him and Brad's related?

15 Q Did you consider reporting to Dave the
16 statement that you heard?

17 A No.

18 Q Did you consider reporting it to CCG human
19 resources?

20 A No, I didn't report it to them.

21 Q Do you remember receiving a copy of the
22 harassment policy from CCG during the course of your
23 employment?

24 A Yeah, I got one.

25 Q And do you know whether such a statement

McLean Exhibit 7

1 Dodson?

2 MR. HUGGETT: Objection. Just to clarify
3 you are asking him what he was involved in?

4 BY MR. POLIQUIN:

5 Q. I'm asking if you can describe the events that
6 happened that day.

7 A. That was the first day, that was the day that
8 the allegations took place?

9 Q. Correct.

10 A. The first I heard about it Brad called me, told
11 me that Brian, Brian and Jason, came up to him -- up
12 to Frank and was yelling and screaming and he told me
13 I needed to get out there right away.

14 Q. And he called you on -- what did he call you
15 on?

16 A. I believe it was Nextel, which is a two-way.

17 Q. On that date what was your position with the
18 company?

19 A. Job supervisor.

20 Q. And were you the supervisor for that particular
21 job?

22 A. For?

23 Q. The job that Bradley Dodson, Jason McLean and
24 Brian Coleman were doing.



McLean Exhibit 8

1 A. Project supervisor.

2 Q. And what is his relation to Brad Dodson?

3 A. What is his relation?

4 Q. Yes.

5 A. You mean as far as work or as far as personal
6 life?

7 Q. Work.

8 A. I guess technically he would be Brad's boss.

9 Q. Would he be pretty much everybody's boss on a
10 job site?

11 A. By "he" you mean Dave Dodson?

12 Q. Dave Dodson, yes.

13 A. Yes.

14 Q. Would he be Brian Coleman's and Jason McLean's
15 boss?

16 A. Not directly.

17 Q. Who would be their direct boss?

18 A. The direct boss would be Brad Dodson.

19 Q. As direct boss what were his duties and
20 responsibilities?

21 A. As "he" being Brad Dodson's duties?

22 Q. Yes.

23 A. To maintain a proper and safe work site.

24 Q. Anything else?



McLean Exhibit 9

up, LLC

McLean and Coleman v. Communications Construction Group, LLC
Jason McLean

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Brad Dodson on May

1 A. All the time.
2 MR. HUGGETT: Objection.
3 Q. And when do you think about that?
4 A. Whenever I think about what life would have
5 been like if he had never made that statement.
6 Q. Do you know if Brad Dodson continued to work
7 after you were laid off from CCG?
8 A. Yeah. Because the day I was laid off, that was
9 the day they transferred him and another guy named Chris
10 to an aerial construction team up in New York, I believe.
11 Q. Do you know, did Brad Dodson make any
12 statements concerning his relationship with, the fact
13 that he was related to David Dodson, during the
14 confrontation with Brian Coleman?
15 A. Yeah. He did spout off a couple times that,
16 you know -- just pretty much they were arguing. Nobody
17 knew where the situation was going to go at that time.
18 So he did make a couple of statements about his brother,
19 yeah.
20 Q. What statements were those?
21 A. I can't remember exactly the exact statements.
22 Q. Can you recall in general what type of
23 statements they were?
24 A. When he was poking him in his chest, he was

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1 saying, "What do you think you're doing here?" He's like
2 "My brother is the supervisor." Or something to that
3 nature. Just pretty much trying to make it like there
4 was nothing we could do. He was going to win, if we
5 tried to do anything, pretty much.
6 Q. Does the Dodson name mean anything within the
7 CCG company?
8 A. It means a lot, just like the Millers. The
9 Dodsons are some of the -- I believe they were some of
10 the founders of the company. His dad, their dad works
11 there, the brother works there, cousins work there. And
12 like I said, I met a cousin of the Dodsons in Ocean City
13 this year. It's a big family company, pretty much.
14 Q. After you were transferred from the New Castle
15 site, do you know how much you were making per square

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1 Q. Now, you heard the question referenced by
2 defense counsel that you were actually making more after
3 you were transferred.
4 A. You make more on the books, but I mean at the
5 end of the week, after you deduct everything you have to
6 spend to make the money, you don't make more, working two
7 hours away from home, than you do when you work 30
8 minutes from home. Working for half the -- less than
9 half the pay, doing more work on a daily basis, just to
10 make that dollar.
11 Q. So, do you know if you were working more days
12 after your transfer?
13 A. Yeah. We worked four-day weeks in Angola and
14 New Castle, and in Westchester, we worked up to six days,
15 sometimes come in on the weekends and even work just to
16 make enough money.
17 Q. And who decided how many days a week you were
18 to work? How was that decided?
19 A. You were mandatory to work five days, but I
20 mean if you didn't make it, they had no problem with you
21 working more days, as much overtime as you want, because
22 the company made a lot more than we did, so they wouldn't
23 have a problem with it. There's always an abundance of
24 work, so --

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63

1 Q. Do you know if anyone informed
2 that Brad Dodson, in fact, did not call you
3 niggers?
4 A. If anybody informed her that he d
5 Q. Yes.
6 A. I don't know. I don't think so.
7 Q. And when Robert Koch had told j
8 conversation, it was in the context of how
9 they were making?
10 A. Yeah.
11 Q. And Robert Koch informed you of
12 that Brad Dodson made, was it a reference
13 were the reason that they were not making
14 A. Exactly, yes.
15 Q. And how do you know that?

McLean Exhibit 10

1 Q. Were you friends with Brad Dodson?

2 A. No.

3 Q. Did you ever hang out socially outside of work?

4 A. No.

5 Q. What was your position on May 31st, 2005 with
6 CCG?

7 A. My work position?

8 Q. Correct.

9 A. Field supervisor.

10 Q. And what is a field supervisor?

11 A. Field supervisor oversees duties that go on in
12 field work.

13 Q. What are those duties and responsibilities?

14 A. Various different duties.

15 Q. Can you describe those various duties and
16 responsibilities?

17 A. Maintaining a job site, dealing with customers,
18 homeowners, permit and county meetings, state highway
19 meetings, utility meetings, dealing with underground
20 infrastructure existing in certain counties and towns.

21 Q. Who was your supervisor at the time on May
22 31st, 2005?

23 A. Dave Dodson.

24 Q. What was his position?



McLean Exhibit 11

1 A. No.

2 Q. Do you remember if your interview with Lisa
3 Clements was either tape-recorded or video-recorded?

4 A. I don't remember.

5 Q. Do you recall telling Lisa Clements -- well, in
6 this Incident Information Report, investigation form,
7 it doesn't say anything about being fearful of Jason
8 McLean or Brian Coleman, does it?

9 A. You are speaking of these two investigation
10 forms?

11 Q. Yes.

12 A. No, it does not.

13 Q. And it doesn't mention anything about Brian
14 Coleman and Jason McLean screaming expletives, does
15 it?

16 A. No, it does not.

17 Q. It does make reference to that you spoke with
18 Jason and Brian for 15 minutes regarding the
19 allegations?

20 A. Yes, it does.

21 Q. Do you know what was said during those 15
22 minutes?

23 A. I don't remember.

24 Q. It said, "The police asked Mike to get Bob so



McLean Exhibit 12

1 A. I don't remember having a conversation with him
2 prior to being interviewed by the police.

3 Q. Do you remember Bob Koch telling you that he
4 had, in fact, heard Brad Dodson call Brian Coleman and
5 Jason McLean two dumb niggers?

6 Q. Can you repeat that question, please?

7 Q. Do you remember Bob Koch telling you that he
8 had heard Brad Dodson call Jason McLean and Brian
9 Coleman two dumb niggers?

10 A. Are you just speaking of prior to going --

11 Q. No, at any point in time.

12 A. I remember him telling me something that was in
13 that ballpark, but not worded the way you spoke.

14 Q. Did he use the term "niggers"?

15 A. Yes, he did.

16 Q. Bob Koch had affirmatively told you that he had
17 heard Brad Dodson call Brian Coleman and Jason McLean
18 niggers?

19 A. Yes.

20 Q. Do you have any reason why Bob Koch would lie
21 about something like that?

22 A. No.

23 Q. Did you believe Bob Koch when he told you that?

24 A. I wasn't sure.



McLean Exhibit 13

1 Q. Why weren't you worried?

2 A. What do you mean? I guess I should say what do
3 you mean by worried?

4 Q. Were you concerned that your brother was
5 arrested that day?

6 A. He wasn't arrested that day.

7 Q. Was he taken away by the police in handcuffs?

8 A. No, not at that day.

9 Q. When was he taken away by the police?

10 A. Probably I think it was two weeks later.

11 Q. Did you make a statement to the police?

12 A. No.

13 Q. Are you sure you didn't make a statement to the
14 police?

15 A. I'm fairly certain, yes. I don't remember
16 making a statement to the police.

17 Q. When was your brother, Bradley Dodson, arrested
18 by the police?

19 A. It was approximately two weeks after the
20 incident occurred.

21 Q. Did your brother have any problems with any
22 other individuals at that time on the work site?

23 A. Not that I'm aware of.

24 Q. Did he have any problems with the Miller crew?



McLean Exhibit 14

1 Then we went back to work, and then they split up them
2 two guys and put them on our crew. Jason and Brian,
3 they worked with us for a while.

4 Q How long did they work with you?

5 A I don't know how long they were there.

6 Q Were they there at the time you left in
7 July to take the other job?

8 A Working with us, no.

9 Q Do you remember that it was after these
10 interviews and they joined your crew that you went
11 down to the southern part of Delaware for the work?

12 A Yeah, I think it was.

13 Q Do you recall whether or not they were on
14 your crew at that point in time?

15 A When we left?

16 Q Yes.

17 A No, they weren't with us when we left.

18 Q When they joined your crew, did you have
19 any further discussions about these events with either
20 Brian Coleman or Jason McLean?

21 A No.

22 Q Any reason that you didn't?

23 A We were told not to. We weren't allowed to
24 discuss it.

25 Q Who told you not to discuss it?

McLean Exhibit 15

1 A No.

2 Q Did he identify by name who he was
3 referring to?

4 A No. He didn't say no names, no.

5 Q Did you know who he was referring to?

6 A He said you don't have two working for you,
7 and he only had those other two guys working for him.

8 Q When you say "working for him," what do you
9 mean?

10 A He was more or less the boss of the crew,
11 and he had three guys working under him.

12 Q What is the boss of the crew? Is that
13 referred to as the foreman?

14 A Right.

15 Q And is that a management employee or just
16 the head of the particular crew?

17 A It's just more or less the head of the crew.

18 Q How many employees are generally in a crew
19 working on the underground work?

20 A They ranged anywhere from four to six.
21 Some had more. It all depended on what they were
22 doing and how many guys they had to have.

23 Q Whose crew were you working on at that
24 point in time?

25 A I was working with Bob Miller and

McLean Exhibit 16

Michael B. Fender

32

1 A. Project supervisor.

2 Q. And what is his relation to Brad Dodson?

3 A. What is his relation?

4 Q. Yes.

5 A. You mean as far as work or as far as personal
6 life?

7 Q. Work.

8 A. I guess technically he would be Brad's boss.

9 Q. Would he be pretty much everybody's boss on a
10 job site?

11 A. By "he" you mean Dave Dodson?

12 Q. Dave Dodson, yes.

13 A. Yes.

14 Q. Would he be Brian Coleman's and Jason McLean's
15 boss?

16 A. Not directly.

17 Q. Who would be their direct boss?

18 A. The direct boss would be Brad Dodson.

19 Q. As direct boss what were his duties and
20 responsibilities?

21 A. As "he" being Brad Dodson's duties?

22 Q. Yes.

23 A. To maintain a proper and safe work site.

24 Q. Anything else?

McLean Exhibit 17

1 they normally do. I don't know his exact job duties,
2 but it would be running a crew of I don't know how
3 many guys right now. Easy three to six guys.

4 Q. You say "running a crew," is that usually what
5 a foreman does is run a crew?

6 A. Correct.

7 Q. What other job duties generally does a foreman
8 have?

9 A. They basically decide -- like I would give them
10 the work and they decide where they're starting and
11 what they're going to do on that day, stuff like that.

12 Q. Would they give you feedback as to --

13 A. They give us a daily as to what they completed
14 that day.

15 Q. And would they give you feedback on members of
16 their crew and how they were doing?

17 A. Yes.

18 Q. And would they tell you if a crew member was
19 not working out or was doing well?

20 A. Usually, yeah, they would.

21 Q. What does David Dodson, Senior do?

22 A. Mechanic.

23 Q. How is he related to you?

24 A. Father.



McLean Exhibit 18

1 doing?

2 A. Correct.

3 Q. And after the evaluation would there be a
4 recommendation for a raise or promotion perhaps? What
5 was the purpose of that evaluation?

6 A. What is that?

7 Q. What was the purpose of that?

8 A. It's usually they're yearly evaluations. It's
9 just to gauge where they're at and it would be -- you
10 could suggest if they should be increased, stay the
11 same, as far as wages. Yeah, you didn't have final
12 decision or anything on that, but basically yearly
13 evaluation to gauge where they're at.

14 Q. Sometimes would there be a recommendation that
15 this person, individual, get a raise?

16 A. Yes.

17 Q. Can you describe was Brad Dodson a good
18 employee with CCG?

19 A. Yes.

20 Q. And what is your basis for that statement?

21 A. As far as workload and stuff like that he
22 carried a good workload and was able to get things
23 done in a timely basis with minimal supervision.
24 Basically dependable as far as being on time to work,



McLean Exhibit 19

1 You just evaluate different areas on where they're at
2 on the scale and there is a place for comments and
3 stuff like that.

4 Q. And in what capacity did you participate in
5 evaluations, at your current position or previous
6 position?

7 A. No, my current position.

8 Q. How would you go ahead and evaluate a member of
9 a crew?

10 A. As far as?

11 Q. How would you decide how to put which numbers
12 to it?

13 A. Just go by what they were asked and like -- and
14 just use the knowledge I had. If it's vague, like
15 another supervisor knew more about them, I might
16 consult them and see what their thoughts were on it.

17 Q. Would you consult with a supervisor that had
18 the most direct contact with that employee usually?

19 A. Correct, correct.

20 Q. And did you ever consult with a foreman?

21 A. Yes, if it was a ground hand or somebody below
22 the foreman that I was evaluating.

23 Q. And that would be something that you would talk
24 to a foreman about about how this crew member was



McLean Exhibit 20

1 BY MR. POLIQUIN:

2 Q. I'm showing to you what has been provided to
3 the plaintiffs as I believe notes took during your
4 investigation.

5 A. Okay.

6 Q. If you can review those and confirm that.

7 A. (Witness complies.) Okay.

8 Q. Now, on Clements-2 the first page on what has
9 been Bates stamped DO429. There is a part cut off
10 there, I believe it says Brad Dodson. Can you confirm
11 that?

12 A. Yes, that's Brad Dodson.

13 Q. The reason why you have Brad Dodson there is
14 that a summary of your discussion with Brad Dodson?

15 A. Yes, these are my notes after the warnings are
16 given to the plaintiffs and defendants.

17 Q. And under 2 it says, "Should know how to handle
18 employees, being supervision."

19 A. Correct.

20 Q. Is that because you viewed that Brad Dodson was
21 in a supervisor position at the time this happened?

22 A. He is a foreman. He is not a supervisor, two
23 different levels.

24 Q. Why would you write "Should know how to handle



McLean Exhibit 21

1 to that point in time?

2 A. No.

3 Q. Was he a good employee?

4 A. I would say he was good.

5 Q. Why was he good?

6 MS. WIRTH: Objection. Are we talking
7 about -- who are we talking about?

8 MR. POLIQUIN: Brian Coleman.

9 A. I would say because that crew was good and he
10 was part of that crew.

11 Q. Outside of being part of that crew did you know
12 him as an employee individually?

13 A. No.

14 Q. Have you ever reviewed any of his employment
15 evaluations?

16 A. No.

17 Q. Who reviews those evaluations?

18 A. I do not know.

19 Q. Have you ever seen those evaluations in your
20 current position as a project supervisor?

21 A. For Brian Coleman?

22 Q. For any employee.

23 A. No.

24 Q. Have you ever seen any employee's evaluation in



McLean Exhibit 22

1 A. As much as I can remember him, I mean, he
2 worked every day, dependable that way. I really don't
3 -- I really don't know.

4 Q. You never had any problems with Brian Coleman?

5 A. No.

6 Q. Did you have any problems with Jason McLean?

7 A. No.

8 Q. Did you have a chance to ever review your
9 brother Bradley Dodson's employment file?

10 A. No.

11 Q. Were you aware previously that your brother had
12 been terminated by the company?

13 A. Not that I remember.

14 MR. POLIQUIN: Can I mark this, please.

15 (Dodson Deposition Exhibit No. 4 was marked
16 for identification.)

17 BY MR. POLIQUIN:

18 Q. I'm going to show you what we have marked as
19 Dodson-4, Employee Warning Report, it's from January
20 18, 1990.

21 A. Okay.

22 Q. It appears that your brother -- it was decided
23 at one point in time your brother would be terminated
24 by the company. You have never seen that report



McLean Exhibit 23

1 for identification.)

2 BY MR. POLIQUIN:

3 Q. I'm going to show you what has been marked
4 Exhibit Dodson-1. Can you tell me what that document
5 is?

6 A. It's CCG harassment policy.

7 Q. And have you read over that document prior to
8 this?

9 A. Yes, but I don't remember anything that is on
10 it. It has been a while.

11 Q. Do you know if CCG's policy prohibits racial
12 harassment or racial discrimination?

13 A. I'm sure it does. I mean --

14 Q. How many classes have you taken concerning
15 sexual harassment or racial harassment or racial
16 discrimination? Have you taken any classes?

17 A. Yeah, one that I can recall.

18 Q. Do you know when that was?

19 A. I don't know the exact date. It was years ago,
20 though.

21 Q. In your understanding of CCG's policy if
22 someone was a subject of racial harassment or racial
23 discrimination, would it be appropriate for that
24 person to report it to their supervisor?



1 A. Correct.

2 Q. Would it be appropriate for a crew member to
3 report it to a foreman as their supervisor?

4 A. They could tell the foreman and the foreman
5 would let the supervisor know.

6 Q. As of May 31, 2005 Bradley Dodson was the
7 foreman in charge of Jason McLean and Brian Coleman?

8 A. Correct.

9 Q. And you used the term "crew," they were on
10 essentially his crew, is that correct?

11 A. Yes.

12 Q. And what were his job duties and responsi-
13 bilities at that time?

14 A. Whose?

15 Q. I'm referring to Bradley Dodson.

16 A. He was the foreman of the drill crew,
17 directional drill crew.

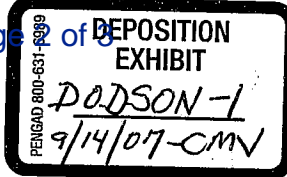
18 Q. And what was the job of the drill crew?

19 A. They would -- we were doing FTTP work for
20 Verizon and basically what that entailed was putting
21 in two-inch pipe and setting some bolts for splice
22 points.

23 Q. Can you describe what happened on May 31, 2005
24 between Brian Coleman, Jason McLean and Bradley



McLean Exhibit 24

**Communications Construction Group, LLC****Harassment Policy****Harassment/Sexual Harassment**

CCG seeks to provide a work environment that is free from intimidation, hostility, or other offenses which might interfere with work performance. Harassment of any sort including verbal, physical, or visual will not be tolerated.

What is Harassment?

Harassment deals with both verbal and physical conduct. It may be but is not limited to words, signs, horseplay, jokes, pranks, intimidation, physical conduct, or violence. Below are some examples of behavior that will not be tolerated:

Verbal Harassment- Verbal threats towards persons or property; the use of vulgar, profane, or discriminatory language towards others. Disparaging or derogatory comments, slurs, offensive sexual flirtation or propositions, verbal intimidation, exaggerated criticism, and name calling.

Physical Harassment- Any physical assault such as uninvited touching, hitting, pushing, kicking, holding, impeding or blocking the movement of another person.

Visual Harassment- Derogatory or offensive posters, cartoons, publications, drawings, or clothing.

Prohibited Items on Company Property- Under no circumstances are the following items permitted on company property, including parking areas: all types of firearms, switch blade knives or knives with blades longer than 4", dangerous chemicals, explosives including blasting caps, chains, or any contraband or illegal object carried for the purpose of injuring or intimidating.

Sexual Harassment- While the above items pertain to all types of harassment, we want to emphasize the seriousness of sexual harassment. Sexual harassment itself may include unwelcome sexual advances, requests for sexual favors, other verbal or physical conduct of sexual nature when such conduct creates an intimidating, hostile or offensive environment, interferes with work performance, or when performing such actions is made a term or condition of employment either explicitly or implicitly.

Harassment/ Sexual Harassment (cont) Reporting

If you believe that you have experienced harassment, report the incident immediately to your Jobsite Supervisor, any other Supervisor with whom you feel comfortable, or to the Human Resource Manager. All reports will be promptly investigated with regard for the privacy of all parties involved, but complete confidentiality cannot be guaranteed. Any employee found to have harassed a fellow employee or subordinate will be subject to severe disciplinary action including possible termination. CCG will not retaliate against any employee who makes a good faith report of possible harassment, even if the employee was wrong. Intentionally falsifying any such harassment is a serious offense, and will be cause for severe disciplinary action, including possible termination.

Responsibility

Every CCG employee is responsible for keeping his or her work environment free of harassment. Any employee who becomes aware of an incident of harassment, whether by witnessing the incident or being credibly informed about it, must report it to a Supervisor or the Human Resource Manager. When CCG becomes aware of alleged harassment, we will investigate. Following the investigation, we will take prompt and appropriate action, whether or not the employee wants the company to do so.

If an employee suffers harassment from a supervisor or any employee, customer, or vendor and is not able to report such harassment, or is not comfortable reporting such harassment to an immediate supervisor or manager, or if a complaint concerning another employee, customer, or vendor is not handled satisfactorily, immediately contact Human Resources at (610) 696-1800.

Any person utilizing this complaint resolution procedure will be treated courteously, and the problem will be handled swiftly and as confidentially as feasible in light of the circumstances, with appropriate corrective action. The registering of a complaint will in no way be used against an employee or have an adverse impact on the individual's employment status. A record of the complaint and subsequent findings will become a part of the complaint investigation record, and a file will be maintained separately from the employee's personnel file.

Harassment is virtually impossible to detect unless a complaint is appropriately reported. Do not assume that the Company is aware of your problem! It is your responsibility to report this information to the appropriate person so the issue can be promptly investigated and resolved.

I understand that my signature below indicates that I have read and understand the above statements and I have received a copy of the CCG Harassment Policy.

Employee's Printed Name

Date

Employee's Signature

McLean Exhibit 25

1 information that it was Brad Dodson that called Brian
2 Coleman a dumb nigger?

3 A. I didn't hear dumb or anything like that, but I
4 heard -- yeah, yeah, I mean, that come out in the
5 wash, yes.

6 Q. So, the accusation was that Bradley Dodson had
7 called Jason McLean and Brian Coleman two dumb
8 niggers?

9 A. Something to that effect.

10 Q. Based on your understanding of CCG's policy
11 against harassment if Bradley Dodson did, in fact, say
12 that, would that be a violation of CCG's harassment
13 policy?

14 A. It would be a violation.

15 Q. Did you learn that other employees confirmed
16 that Bradley Dodson had called Jason McLean and Brian
17 Coleman two dumb niggers?

18 A. I believe there was another person that said
19 that, yes.

20 Q. Did you learn that Joseph Tatsch had confirmed
21 that Bradley Dodson had called Brian Coleman and Jason
22 McLean two dumb niggers?

23 A. Yes.

24 Q. Did you learn that Bob Koch had confirmed that



McLean Exhibit 26

1 Q. Who gives that training?

2 A. It's usually an outside vendor.

3 Q. And do you know how often that occurs?

4 A. Once every two or three years.

5 Q. Would they have certificates showing that they
6 attended that training?

7 A. I don't believe so.

8 Q. Do you know what the subject matter of the
9 training would be?

10 A. I don't recall.

11 Q. Does the instructor give examples of what kind
12 of conduct would constitute racial harassment?

13 A. Yes.

14 Q. Under CCG's policy what type of conduct would
15 constitute racial harassment?

16 A. It could be verbal, it could be visual.

17 Q. Can you give examples?

18 A. Visual would be, you know, a picture, a
19 cartoon, a comic and then verbal would be, you know, a
20 word or a phrase.

21 Q. Would calling employees niggers constitute
22 racial harassment under CCG's policy?

23 A. Yes, it would.

24 Q. Would that constitute -- would calling



McLean Exhibit 27

1
2
3
4

1 Q. Does the company have a -- is that the
2 progressive discipline policy of the company you just
3 talked about?

4 A. Yes.

5 Q. Does the CCG have a policy concerning promoting
6 employees?

7 A. No, we do not.

8 Q. Does the company have a policy concerning
9 raises or increases in salary?

10 A. No, not specific to that, no.

11 Q. CCG has a policy against racial harassment and
12 discrimination, is that correct?

13 A. CCG has a policy against all types of
14 harassment.

15 Q. Have you ever received any harassment or
16 discrimination training during your employment at CCG?

17 A. Training I haven't received it, no.

18 Q. Do any employees receive any harassment or
19 discrimination training during their employment?

20 A. Yes, our supervisors.

21 Q. When you say "supervisors," can you name
22 specific positions?

23 A. Project supervisors, field supervisors,
24 managers.



McLean Exhibit 28

1 employees niggers constitute racial harassment whether
2 it was said directly to them or to other employees?

3 A. It would.

4 Q. Why would calling employees niggers to other
5 employees constitute racial harassment under CCG's
6 policy?

7 A. Because it's a derogatory word.

8 Q. During your time at CCG you haven't attended
9 any classes or seminars concerning racial harassment
10 related to human resources?

11 A. I've attended numerous seminars, but I don't
12 recall what the material was off the top of my head.

13 Q. Do you know if it involved racial harassment?

14 A. It may have, but I'm not entirely sure.

15 Q. Are you a member of any professional
16 associations concerning human resources?

17 A. Yes, I'm a member of SHRM and I'm also a member
18 of the Chester County Human Resource Association.

19 Q. SHRM being the Society For Human Resource
20 Management?

21 A. Correct.

22 Q. Prior to May 31, 2005 have you ever personally
23 conducted any type of investigation concerning
24 harassment or discrimination?



1 A. Not that I recall.

2 Q. Would there be a reason that you wouldn't
3 remember that?

4 A. It has been many years so, no, I don't
5 remember.

6 Q. Did you work at any other companies prior to
7 working for CCG?

8 A. Yes.

9 Q. Did you ever personally conduct any
10 investigations concerning harassment?

11 A. No.

12 Q. Prior to May 31, 2005 did you ever personally
13 conduct any investigations concerning harassment?

14 A. I've done investigations, but I don't recall if
15 it was more harassment or not.

16 Q. Have you ever assisted anyone in conducting a
17 harassment investigation?

18 A. No.

19 Q. Now, when did you first learn about the
20 incident between Jason McLean, Brian Coleman and Brad
21 Dodson that involves the facts in this lawsuit?

22 A. Once I received a phone call from Jason McLean.

23 Q. When did that occur?

24 A. The day of the incident.



McLean Exhibit 29

1 A What's her name? I don't remember. Human
2 resource.

3 Q CCG human resources?

4 A Yeah.

5 Q Lisa Clements?

6 A Is that who it is? That might have been
7 it.

8 Q She's the human resource manager for CCG
9 and was at that time.

10 A Then that was probably her.

11 Q What was the meeting with human resources?

12 A They were questioned -- asking questions
13 all about it.

14 Q Who was present for that?

15 A What do you mean who was present? Like --

16 Q Did you speak directly with the person from
17 human resources?

18 A Yes. I spoke to Lisa.

19 Q Was anyone else present when you spoke to
20 Lisa?

21 A Yeah, Gates.

22 Q John Gates?

23 A Yeah.

24 Q Do you recall his title?

25 A I don't know what he was.

McLean Exhibit 30

1 Q Let's break it into two parts.

2 The first part is it refers to Friday?

3 A I see that.

4 Q It relates what you were doing, walking by,
5 and what you heard.

6 That's correct, right?

7 A Yeah.

8 Q You weren't involved in the conversation.

9 And then it says Monday or Tuesday?

10 A It might have been. I don't know. I
11 thought it was the same day they came.

12 Q So you at this point in time, you think it
13 was one day, but you don't really recall?

14 A Yeah. I thought they came the same day,
15 but they might have showed up Monday or Tuesday.

16 Q It says, working with Bobby Koch and Pap?

17 A That's the one I told you I think his
18 name's John or something like that, but everybody
19 called him Pap.

20 Q So other than your not being sure on the
21 different dates, this is correct?

22 A As far as I know of, yeah.

23 Q After talking with human resources, did you
24 talk with anyone else about this matter?

25 A No. Everybody told me I should have just

1 kept my mouth shut and not said anything, which is
2 true, but then when you're working with people and
3 that and you -- I don't like the slare word any ways..
4 Everybody's out to make a living, and that shouldn't
5 have been said.

6 Q And it's your understanding --

7 A But I heard it, so I felt it's my right,
8 you know, to say what I heard, so that's all I can
9 really tell you about it.

10 Q Okay.

11 And human resources asked you exactly what
12 you heard --

13 A And I told them what I heard.

14 Q -- and took it down in their notes,
15 correct?

16 A Yeah.

17 Q And you understood that was against the
18 company's policy in the harassment policy?

19 A Well, you mean for them for him to say
20 something like that?

21 Q Correct.

22 A Yeah. Well, it's in anybody's policy more
23 than likely.

24 Q Do you know what discipline was issued as a
25 result of this?

McLean Exhibit 31

1 A. No.

2 Q. Another employee, Joseph Tatsch, also confirmed
3 he heard Brad Dodson make that statement calling Jason
4 McLean and Brian Coleman two dumb niggers, is that
5 correct?

6 A. That is correct.

7 Q. Other than Brad Dodson did any employee make a
8 statement to you in your investigation that Brad
9 Dodson did, in fact, not make that statement?

10 MR. WIRTH: Objection, that was really
11 confusing. Can you restate that?

12 BY MR. POLIQUIN:

13 Q. Did any employee tell you that Brad Dodson
14 didn't call Brian Coleman and Jason McLean two dumb
15 niggers?

16 A. No.

17 Q. Brian Coleman also represented to you that
18 Robert Koch had told him that Brad Dodson had called
19 him and Mr. McLean two dumb niggers, is that correct?

20 A. Correct.

21 Q. Now, Jason McLean had contacted you on the date
22 the incident happened?

23 A. Correct.

24 Q. Did anyone else contact you on the date the



McLean Exhibit 32

1 that correct?

2 A. That's correct.

3 Q. And would it change your investigation at all
4 if Brad Dodson pled guilty to one of the charges he
5 was arrested for?

6 A. No.

7 Q. Why not?

8 A. Because there was no concrete evidence
9 regarding the racial remark that was made.

10 Q. What do you consider concrete evidence?

11 A. Concrete evidence would have been if Jason
12 McLean and Brian Coleman had heard the comment
13 themselves.

14 Q. But Joseph Tatsch and Robert Koch affirmatively
15 stated that they heard the comment?

16 A. I was not there. I didn't hear the comment and
17 Jason and Brian Coleman did not hear the comment as
18 well.

19 Q. You wouldn't have been there if Jason McLean or
20 Brian Coleman would have heard the comment either,
21 though?

22 MR. WIRTH: Objection. Is that a question?

23 MR. POLIQUIN: Yes.

24 A. Correct.



McLean Exhibit 33

1 Coleman two dumb niggers to another group of
2 employees, isn't that true?

3 A. I'm sorry, can you ask that again?

4 Q. There is at least two employees that
5 represented to you they heard Brad Dodson state that
6 Jason McLean and Brian Coleman were two dumb niggers,
7 isn't that correct?

8 A. That is correct.

9 Q. Did they also represent that Brad Dodson was
10 poking Brian Coleman in the chest that day?

11 MR. WIRTH: Objection, vague. Can you
12 clarify what you are talking about?

13 BY MR. POLIQUIN:

14 Q. Did anyone during your investigation state to
15 you that they saw Brad Dodson poke Brian Coleman in
16 the chest that date?

17 A. Yes.

18 Q. And is that a violation of CCG's harassment
19 policy?

20 A. It's a violation of a CCG policy, but not
21 particularly the harassment policy. Can I rephrase
22 that? It is a violation of physical harassment.

23 Q. Based on these findings you gave Brian Coleman
24 and Jason McLean the same type of violation as Brad



McLean Exhibit 34

1 Dodson?

2 A. I don't believe that's correct.

3 Q. What punishment did Brad Dodson receive after
4 your investigation?

5 A. He received a written warning.

6 Q. What punishment did Brian Coleman receive after
7 your investigation?

8 A. A written warning.

9 Q. What punishment did Jason McLean receive after
10 your investigation?

11 A. A written warning.

12 Q. So, they received the same type of punishment,
13 a written warning?

14 A. They received -- they all receive written
15 warnings, however, the individual that was on the
16 written warning is different. They were written up
17 for different things.

18 Q. Other than the actual way the warning was
19 written was there any other punishment to Brad Dodson?

20 A. No.

21 MR. POLIQUIN: If I could have this marked.

22 (Clements Deposition Exhibit No. 2 was
23 marked for identification.)
24



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McLean Exhibit 35

31

32

1 A. Again, if Jason and Brian had actually heard
2 the statement and if Brad had admitted that he made
3 the statement.

4 Q. Why does that matter?

5 A. Why does what matter?

6 Q. Why does it matter that Jason McLean and Brian
7 Coleman did not hear the statement since it's a
8 violation of your harassment policy to call two
9 employees two dumb niggers in front of another group
10 of employees?

11 A. No one knows that the statement was made. Brad
12 denies that he made the statement and Jason and Brian
13 are basing their information off of two other
14 individuals that state that they heard the statement,
15 the comment.

16 Q. Did you not believe Bob Koch and Joseph Tatsch?

17 A. No, I didn't believe anything because -- and an
18 investigation hadn't been done yet.

19 Q. But you conducted an investigation?

20 A. Yes, I did.

21 Q. So, at some point in time you have to make a
22 determination after interviewing all the witnesses, is
23 that correct?

24 A. Correct.



1 Q. At the end of the day when you came up with
2 your conclusions did you not believe Bob Koch and
3 Joseph Tatsch?

4 A. I still didn't -- can you rephrase that
5 question?

6 Q. Did you not believe Joseph Tatsch and Bob Koch
7 when they told you they heard Brad Dodson refer to
8 Jason McLean and Brian Coleman as two dumb niggers?

9 A. I did and I didn't because of -- I did and I
10 didn't believe them.

11 Q. What was the purpose of your investigation?

12 A. The purpose of my investigation was to find out
13 what actually had happened.

14 Q. And would that include finding out whether, in
15 fact, Brad Dodson made the statement?

16 A. Yes.

17 Q. And your conclusion was that he did not make
18 the statement?

19 A. My conclusion was that according to Brad he did
20 not make the statement.

21 Q. And that was after listening to both Bob Koch
22 and Joseph Tatsch?

23 A. Correct.

24 Q. What was your basis for giving Jason McLean and



McLean Exhibit 36

15

16

1 Q. Does the company have a -- is that the
2 progressive discipline policy of the company you just
3 talked about?

4 A. Yes.

5 Q. Does the CCG have a policy concerning promoting
6 employees?

7 A. No, we do not.

8 Q. Does the company have a policy concerning
9 raises or increases in salary?

10 A. No, not specific to that, no.

11 Q. CCG has a policy against racial harassment and
12 discrimination, is that correct?

13 A. CCG has a policy against all types of
14 harassment.

15 Q. Have you ever received any harassment or
16 discrimination training during your employment at CCG?

17 A. Training I haven't received it, no.

18 Q. Do any employees receive any harassment or
19 discrimination training during their employment?

20 A. Yes, our supervisors.

McLean Exhibit 37

1 had seven warnings during his employment with CCG?

2 MR. WIRTH: Did you say Brian Coleman?

3 MR. POLIQUIN: Excuse me, Brad Dodson.

4 A. If that's what is on his file, yes. I don't
5 know off the top of my head how many it was.

6 Q. Did you know Brad Dodson was terminated for a
7 violation on January 18, 1990?

8 A. Just based on what I would have seen in the
9 file.

10 Q. Based on what you saw in the file did that
11 impact your punishment at all?

12 A. No.

13 Q. If you had learned that Brad Dodson did not
14 deny making a statement to the police, would that have
15 changed the findings of your investigation?

16 A. Yes, it would have.

17 Q. But you never followed up on what Brad Dodson
18 represented to the police?

19 A. No, I did not.

20 Q. And why not?

21 A. I don't believe it was actually available, the
22 police report, at the time of my investigation.

23 Q. Did you call the police officer that was
24 conducting the investigation?



McLean Exhibit 38

27

28

1 Dodson?

2 A. I don't believe that's correct.

3 Q. What punishment did Brad Dodson receive after
4 your investigation?

5 A. He received a written warning.

6 Q. What punishment did Brian Coleman receive after
7 your investigation?

8 A. A written warning.

9 Q. What punishment did Jason McLean receive after
10 your investigation?

11 A. A written warning.

12 Q. So, they received the same type of punishment,
13 a written warning?

14 A. They received -- they all receive written
15 warnings, however, the individual that was on the
16 written warning is different. They were written up
17 for different things.

18 Q. Other than the actual way the warning was
19 written was there any other punishment to Brad Dodson?

20 A. No.

21 MR. POLIQUIN: If I could have this marked.

22 (Clements Deposition Exhibit No. 2 was
23 marked for identification.)

24



McLean Exhibit 39

1 decision-making to transfer Brad Dodson, Brian Coleman
2 or Jason McLean?

3 A. No, I was not.

4 Q. Who decided where those employees would be
5 transferred?

6 A. The regional manager, John Gates, and the
7 project supervisor, Dave Dodson, Junior.

8 Q. Dave Dodson is brothers with Brad Dodson, is
9 that correct?

10 A. That is correct.

11 Q. And you didn't feel it was inappropriate for
12 Dave Dodson to be part of those decisions since he was
13 closely related to Brad Dodson?

14 A. No, because Dave Dodson is our project
15 supervisor and he maintains that position whether it's
16 his brother or not.

17 Q. As somebody with a degree in HR management you
18 don't see any conflict of interest in having Dave
19 Dodson participate in this decision?

20 A. I didn't even know the decision was being made.

21 Q. So, no one asked you?

22 A. No.

23 Q. Do you think you should have been consulted on
24 a decision like this?



McLean Exhibit 40

1 concerning this incident?

2 A. Can you ask that again, please.

3 MR. POLIQUIN: Can you repeat my last
4 question.

5 (The last question was read back by the
6 court reporter.)

7 A. Hypothetically speaking are you asking?

8 Q. Yes.

9 A. No.

10 Q. Why do you say that?

11 A. Hypothetically I don't see where McLean and
12 Coleman should be punished.

13 Q. Were you ever made aware of Brian Coleman or
14 Jason McLean being written up for poor work quality?

15 MS. WIRTH: Objection, it's compound.

16 BY MR. POLIQUIN:

17 Q. Were you ever made aware that Brian Coleman was
18 ever written up for poor work quality?

19 A. Not in my time at CCG, no.

20 Q. Have you ever been made aware that Jason McLean
21 was written up for poor work quality?

22 A. Not in my time at CCG, no.

23 Q. And as field supervisor if they were working on
24 the project you were the field supervisor on, would



McLean Exhibit 41

1 concerning this incident?

2 A. Can you ask that again, please.

3 MR. POLIQUIN: Can you repeat my last
4 question.

5 (The last question was read back by the
6 court reporter.)

7 A. Hypothetically speaking are you asking?

8 Q. Yes.

9 A. No.

10 Q. Why do you say that?

11 A. Hypothetically I don't see where McLean and
12 Coleman should be punished.

13 Q. Were you ever made aware of Brian Coleman or
14 Jason McLean being written up for poor work quality?

15 MS. WIRTH: Objection, it's compound.

16 BY MR. POLIQUIN:

17 Q. Were you ever made aware that Brian Coleman was
18 ever written up for poor work quality?

19 A. Not in my time at CCG, no.

20 Q. Have you ever been made aware that Jason McLean
21 was written up for poor work quality?

22 A. Not in my time at CCG, no.

McLean Exhibit 42

1 Q. Prior to this incident did you ever have any
2 problems with Jason McLean and Brian Coleman?

3 A. No.

4 Q. Did you have any complaints about their work?

5 A. Very vague. I mean, nothing that was real
6 concerning. Brad did tell me that they were -- he
7 thought they would be working faster and stuff like
8 that.

9 Q. So, Brad Dodson had informed you that he
10 thought Jason McLean and Brian Coleman could be
11 working faster?

12 A. Right. I don't know if it was that exactly,
13 but something to that.

14 Q. And the speed of their work would that involve
15 how much money the crew made?

16 A. Correct.

17 Q. Prior to this incident other than what you
18 talked about did Bradley Dodson have any other
19 problems with Jason McLean and Brian Coleman?

20 A. Not that I was aware of.

21 Q. Did you have any problems concerning Jason
22 McLean and Brian Coleman's work prior to this?

23 A. No.

24 Q. Do you know why Brian Coleman approached



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JASON MCLEAN and)	
BRIAN COLEMAN,)	
)	
Plaintiffs,)	
)	
v.)	Civ. No.: 06-617-SLR
)	
COMMUNICATIONS)	JURY TRIAL DEMANDED
CONSTRUCTION GROUP, LLC.,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I certify that on this 28th day of November, 2007, I served electronically the
attached Plaintiffs' Opening Brief in Support of Its Motion for Partial Summary

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